

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Marriage of:

SIMON PEDERSEN,

Respondent,

and

LONE PEDERSEN,

Appellant.

CASE # 69265-8

(Snohomish County
Superior Court Case # 06-
3-01300-1)

RESPONDENT'S
~~REPLY~~ BRIEF

Attorney for Appellant:

Helmut Kah, Attorney at Law
WSBA Membership # 18541
6818 140th Avenue NE
Woodinville, WA 98072-9001

Phone: 425-949-8357
Fax: 425-949-4679
Email: helmut.kah@att.net

Respondent:

Simon B. Pedersen
Pro se
14570 Grande Cay Circle,
2409
Ft. Myers, FL 33908

Phone: 206-356-8308
Email: simonbpl@gmail.com

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RCW 26.27.030; 26.27.201; RCW 26.27.211; RCW 26.27.221; RCW 26.27.231; RCW 26.27.261; RCW 26.27.271

RCW 26.09.140.

28 U.S.C. § 1738A “Federal Parental Kidnapping Prevention Act of 1980”

The Hague Convention on the Civil Aspects of International Child Abduction

I. INTRODUCTION.

Appellant, Lone Pedersen (hereinafter "Lone") seeks to maintain the jurisdiction of Washington Courts over custody issues involving her minor child, Nora Pedersen (hereinafter "Nora") and her former husband, Simon Pedersen (hereinafter "Simon"), even though none of these parties live in Washington nor have sufficient personal contacts with this State to permit any future actions be taken here.

Lone is a citizen of Norway who voluntarily moved to Oslo, Norway in 2011. She has never returned to Washington to live since that time. She no longer has adequate contacts to avail herself of Washington Courts.

Simon, a dual citizen of Norway and the United States, moved to Florida on July 6, 2012 and no longer has any contacts with Washington State which would permit the Court to have jurisdiction over his person here.

The child at issue, Nora Pedersen, moved to Norway on July 5, 2012 where she lived until the Norwegian Court ordered her to move to Florida to live with Simon in July 2013. Both parties acquiesced to the Norwegian Court taking jurisdiction over the issues of the child custody and support. Both parties engaged legal counsel in Norway and the Norway court has ruled.

Lone seeks to maintain jurisdiction in Washington solely for financial reasons and asks this Court to overturn the judgment Judge Kenneth Cowsert of the Superior Court of Snohomish County who held that no further actions were properly brought in Washington State due to lack of jurisdiction. The Honorable Judge Cowsert correctly recognized that neither party had any connection to Washington State after July 5, 2012. In denying Lone's motion for reconsideration on August 3, 2012, Judge Cowsert found: "This court has been advised that proceedings have been commenced in Norway, where Respondent and the child, Nora, currently reside, which is the most appropriate for further litigation in this matter."

No party lives, works or does business in Washington, and thus the Court's order terminating jurisdiction from Snohomish County Superior Court, Washington was proper and just and should be affirmed. In the alternative, this Appeal should be dismissed based on Mootness and/or based on Forum Nonconveniens.

II. STATEMENT OF THE CASE.

Simon and Lone Pedersen both were born in Norway.¹ They have three children, Karoline (now aged 25)², Jakob (now aged 20)³ and Nora

¹ CP 75, line 24-24 – CP 76, line 1.

² CP 178, paragraph 7.

³ CP 251, paragraph 21.

(now aged 16).⁴ Simon, Jakob and Nora are U.S. Citizens. Lone remains a citizen of Norway.

In 2006 the parties were living together in Edmonds, Washington when Simon filed for divorce in Snohomish County Superior Court. At that time, Washington was the “home state” of all three of their children and was the proper forum for the dissolution action. Nora is the only child of the parties who is still a minor.⁵ Nora will both graduate high school and turn 18 in 2015.⁶

In 2011, Lone moved with her fiancé to Norway.⁷ Before moving to Norway she filed a Notice of Intended Relocation of Child with the court to allow her to move Nora to Oslo, Norway. Simon objected to having his daughter moved and a trial was held in October 2011. After trial on this matter, the court entered a ruling on November 17, 2011 holding that (1) Lone could move Nora to Norway once she had obtained employment and had established a stable residence in Oslo;⁸ and (2) until that time, Nora would remain with Simon in Edmonds and finish her freshman year of high school.⁹ During the time period when Lone was establishing herself in Oslo and before Nora joined her there, Simon

⁴ CP 71, 75, lines 18-20.

⁵ CP 71, 75, lines 18-20.

⁶ Id.

⁷ CP 75, lines 10-13; CP 227; CP 247.

⁸ CP 245.

⁹ Id.; CP 316-329, 357-368.

decided to move to Florida for his work. He filed a Notice of Intended Relocation of Child with the court seeking to move Nora to Florida.¹⁰ This request by Simon was subsequently withdrawn.¹¹

On a hearing held before Judge Cowsert on May 19, 2012, Simon who appeared *pro se* raised the issue of the continuing jurisdiction of Washington courts, or the lack thereof, after both he and Nora moved out of state.¹² This issue was raised in front of Lone's attorney on May 19, 2013 and the "home state" of the child was discussed.¹³ The verbatim exchange was as follows:

MR. PEDERSEN: I have another question then. If the case is that she would actually then be moved to Norway, as a Norwegian citizen then living in Norway with her mother who is also a Norwegian citizen. what would happen to jurisdiction? Would the jurisdiction shift to Norway? Should a Washington court have jurisdiction?

THE COURT: That's a good question and I'm not sure I have an answer. I know that if it were United States move, that I would have jurisdiction until the child has been in the new state at least six months, because we have a statute that talks about is the child's home state this state or some other state. If it's this state it's because the child has been here at least six months with one or the other parent. And as to internationally, I don't have the slightest idea.

MR. PEDERSEN: That's a question for maybe in June. But I'm just throwing it out there, because it seems, oh, here's my job contract, she's going to move, she gets moved, and then what?

¹⁰ CP 384-392.

¹¹ CP 23; CP 99, line 12-14.

¹² CP 12-14.

¹³ *Id.*

THE COURT: Yeah, that's a good question. And I can say generally, but I certainly couldn't say this applies, that most of the time the jurisdiction, if there's an issue about it, is where the child lives. Now, naturally for every general statement there are exceptions. And I just don't have an answer.

MR. PEDERSEN: Maybe that will come up then. But because of my job I will be relocating here this summer to working out of the East Coast in Florida, so there will be nobody here.

THE COURT: Right. And if Nora's allowed to go to Norway, she won't be in Florida which probably would make Florida a little hesitant to assume jurisdiction over anything.

MR. KAH: From a state law perspective, and frankly Mr. Pedersen should consult a lawyer of his own, but Washington remains Nora's home state for six months after she leaves, generally speaking.

THE COURT: Right, generally.¹⁴

During this exchange above, Lone's attorney acknowledged that Washington would lose jurisdiction six months after Nora's departure. The hearing was subsequently continued to June 13, 2012 during which Simon again raised the issue of where proper jurisdiction would be after he and Nora each moved away from Washington.¹⁵ Lone's attorney knew that this issue would be heard on June 13, 2012 and submitted written documents to the court on this issue for consideration by the Court on June 13, 2012.¹⁶ Lone's claim that she had no opportunity to address this issue

¹⁴ CP 12-14 (Emphasis added).

¹⁵ CP 106-112.

¹⁶ CP 33-36.

at the lower court¹⁷ is patently false. Lone's attorney was in court on May 19, 2012 and participated in the discussion. Lone's attorney filed papers disputing this issue prior to the June 13, 2012 hearing. If there was any lack of sufficient briefing prior to the June 13, 2012 hearing, that was both the fault and the choice of Lone and her attorney.

On June 13, 2012, Judge Cowsert ruled that Nora would move to Oslo on or before July 5, 2012.¹⁸ The Judge also ruled that once Nora left Washington to live in Norway and Simon moved to Florida, that it would no longer have jurisdiction over this matter.¹⁹ The verbatim proceedings transcript reads as follows:

THE COURT: . . . Here is the question: Do you have any documentation that says upon Nora beginning her residence in Norway that they will take jurisdiction over issues such as parenting plan and child support?

MR. PEDERSEN: No, but I can get it very quickly.

THE COURT: Good. That's what I need you to do. Because I'm going to put in no further proceedings shall be brought in this court after Nora relocates to Norway on July 5. That's it. If proof is submitted that Norway will assume primary jurisdiction over these issues, then I'm just going to let Norway do it because we only have three weeks, two weeks basically, until it will simply be an exercise by this Court of people who aren't even in this jurisdiction anymore. I'm going to need you to file those documents, okay?

HR. PEDERSEN: I will file them here, as usual?

¹⁷ Appellant's Opening Brief pp 10-11.

¹⁸ CP 18-19

¹⁹ CP 22-24.

THE COURT: You file them with the clerk. You send a copy to Mr. Kah. I will have no further dealings with this case. But if there is a motion brought, it will be brought in the Commissioner's Department, and this order will tell the commissioner if the documents have been filed, that those motions should be simply not pursued, okay?

MR. PEDERSEN: You will write it in?

THE COURT: I'm writing it here. I'm writing: "Upon filing of proof/documents providing that" -- I'm going to take out the word "providing" -- "verifying that Norway will assume primary jurisdiction over parenting plan/child support issues involving these parties and Nora, Snohomish County will decline to hear any further motions in this case as the parties and the child will have no connection to Washington State." Okay. We will make a copy of this for you. Again, it reads: "Upon filing of proof/documents that verify that Norway will assume primary jurisdiction over parenting plan/child support issues involving these parties and Nora, Snohomish County will decline to hear any further motions in this case as the parties and the child will have no contact with Washington State."

Good enough?

MR. PEDERSEN: Yes, sir.

Given this lack of continuing jurisdiction due to no parties living in Washington State, Judge Cowser ordered:

Paragraph 7:

"No further proceedings shall be brought in this court after Nora relocates to Norway on July 5, 2012."

Paragraph 8:

Upon filing proof/documents that verifying (sic) that Norway will assume primary jurisdiction over parenting plan / child support issues involving these parties and Nora,

Snohomish County will decline to hear any further motion in this case, as the parties and the child will have no connection to Washington State.²⁰

After entry of this Order, Nora moved to Oslo to reside with Lone on July 5, 2012 and Simon moved to Fort Meyers, Florida the next day.²¹ Lone timely moved for reconsideration.²² The Court entered a Denial of Reconsideration on August 3, 2012 which re-affirmed the ruling regarding jurisdiction.²³ Prior to denying the Request for Reconsideration, the Court received a Declaration of Simon Pedersen which had attached to it a letter from the Norwegian Court which confirmed that Norway had accepted jurisdiction over this matter.²⁴ The Court found:

“This court has been advised that proceedings have been commenced in Norway, where Respondent and the child, Nora, currently reside, which is the most appropriate for further litigation in this matter.”²⁵

Both Lone and Simon have attorneys in Norway.²⁶ The court in Norway assumed jurisdiction over this matter and held hearings regarding the custody and support of Nora.²⁷ The Norway court has since ruled that Nora should live with Simon in Florida and has ordered Lone to pay some

²⁰ CP 22-24.

²¹ CP 26-27.

²² CP 139-142.

²³ CP 19.

²⁴ CP 29-30.

²⁵ CP 19.

²⁶ Exhibit E, page 2 of Reply Brief of Simon Pedersen before the Court of Appeals.

²⁷ CP 29. See also Exhibit E to Reply Brief of Simon Pedersen on Motion before the Court of Appeals.

expenses.²⁸

Since July 2012, Simon has resided in Florida, Lone has continued to reside in Oslo and Nora resided in Oslo until moving to live with Simon in Florida in July 2013 pursuant to the ruling of the Norway Court. At no time since July 2012 has any of the parties resided in Washington State.

III. ARGUMENT.

- A. This matter should be dismissed due to mootness because under the UCCJEA Washington no longer has jurisdiction in this matter.

Lone appeals Judge Cowsert's ruling that Snohomish County Superior Court no longer has jurisdiction over this case due to all of the parties living outside of the State of Washington. Judge Cowsert's ruling was further bolstered by his specific findings in the Denial of Reconsideration entered on August 3, 2012 which states: "This court has been advised that proceedings have been commenced in Norway, where Respondent and the child, Nora, currently reside, which is the most appropriate for further litigation in this matter."²⁹

Even if these rulings were not correct at the time, due to the passage of time and the operation of the Uniform Child Custody Jurisdiction and Enforcement Act (hereinafter "UCCJEA"), no jurisdiction in Washington over this matter exists today. Thus the issue of whether

²⁸ *Id.*

²⁹ CP 19.

Judge Cowser's ruling was correct or incorrect is moot and this appeal should be dismissed.

The UCCJEA was adopted under Chapter 26.27 RCW. It contains clear rules on when Washington does – and does not – have jurisdiction in this case. RCW 26.27.211 provides the standards for exclusive continuing jurisdiction, providing as follows:

26.27.211. Exclusive, continuing jurisdiction

(1) Except as otherwise provided in RCW 26.27.231, a court of this state that has made a child custody determination consistent with RCW 26.27.201 or 26.27.221 has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.³⁰

(2) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under RCW 26.27.201.

Here, the rulings that Judge Cowser made are wholly consistent with RCW 26.27.211(1)(a) and (b). Under UCCJEA the Washington

³⁰ Emphasis added.

courts no longer have continuing jurisdiction in this case. None of the parties were going to be residing in Washington after July 5, 2012. And Lone, the appellant here, has been gone since 2011. Additionally, the exception contained under RCW 26.27.211(2) does not apply because if a new case were filed today, the Washington Courts would not have “jurisdiction to make an initial determination under RCW 26.27.201.”³¹ An examination of RCW 26.27.201 makes clear that Washington would not have jurisdiction if a new action was started by either of these parties today.

26.27.201. Initial child custody jurisdiction

(1) Except as otherwise provided in RCW 26.27.231, a court of this state has jurisdiction to make an initial child custody determination only if:

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) A court of another state does not have jurisdiction under (a) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under RCW 26.27.261 or 26.27.271, and:

(i) The child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with

³¹ RCW 26.27.211(2).

this state other than mere physical presence; and

(ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) All courts having jurisdiction under (a) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under RCW 26.27.261 or 26.27.271; or

(d) No court of any other state would have jurisdiction under the criteria specified in (a), (b), or (c) of this subsection.

(2) Subsection (1) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Thus the Washington courts has no authority to modify the ruling of Judge Cowsert under the clear provisions of the UCCJEA.

An analysis of the factors contained in RCW 26.27.201 further clarifies that Washington no longer has jurisdiction in this matter.

Section (1)(a) of this statute looks at the home state of the child. Nora moved to Oslo, Norway on July 5, 2012. On January 5, 2013, Norway became Nora's "home state". At that point, Washington no longer had jurisdiction. Section (1)(b) only applies if the other "state"¹²

¹² Norway, while a different country, is considered a "state" for the purposes of this Act. RCW 26.27.051.

either lacks jurisdiction or declines to exercise jurisdiction. Here, Norway did exercise jurisdiction over this issue after Nora moved there in mid-2012.³³ Likewise, Section 1(c) only applies if all states with jurisdiction decline to exercise that jurisdiction which is not the case here. Finally, 1(d) does not apply because Norway has exercised jurisdiction in this matter.

As additional support, application of UCCJEA to this case is consistent with the Federal Parental Kidnapping Prevention Act of 1980³⁴ and also the Hague Convention on the Civil Aspects of International Child Abduction (“Hague Convention”) which both the United States and Norway have ratified.³⁵ This Court has previously held that the Hague Convention:

is a clear manifestation of this country’s national policy to discourage abductions and encourages home-state jurisdiction. Although somewhat more generous and

³³ See Exhibit E of Reply Brief of Simon Pedersen to the Court of Appeals.

³⁴ 28 U.S.C. § 1738A, the parental kidnapping prevention act of 1980 (PKPA), which gives full faith and credit to custody determinations by state courts when made in accordance with its requirements. *In re Marriage of Hamilton*, 120 Wash.App. 147, 150, 84 P.3d 259, 260-61 (2004).

³⁵ See the Ratification Table which is in the Appendix to this Brief.

Article I of the Hague Convention provides as follows:
The objects of the present Convention are

[a] to secure the prompt return of children wrongfully removed to or retained in any Contracting State, and

[b] to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

flexible in allowing a nation's courts to assume jurisdiction in an international custody dispute, there is a surprisingly good fit between the purposes and provision of the UCCJA and the Hague Convention. Our interpretation and application of the general language of RCW 26.27.030 applying the general policies of the UCCJA to international custody disputes is in harmony with the provisions and purposes of the Hague Convention.³⁶ (Emphasis added.)

Application of UCCJEA to the facts of this case make it clear that Washington has no continuing jurisdiction in this case from – at the latest date – January 5, 2013. Thus, the appeal regarding whether Judge Cowser's ruling made on June 13, 2012 (which was re-affirmed on August 3, 2012) that Washington no longer had jurisdiction in this matter is moot by operation of law. This appeal should be dismissed based on mootness.

This is an issue of jurisdiction not a order barring Lone from "access to courts."

In her Opening Brief Lone claims that Judge Cowser "confuses jurisdiction with right of access to the court."³⁷ Lone is the one who is confused. There can be no right of access where there is no jurisdiction. The cases cited by Lone regarding barring access to courts are inapplicable to this matter and should be disregarded as such.³⁸

It has been demonstrated that Lone has ample access to courts: she

³⁶ *In re Marriage of Ieronimakis*, 66 Wash.App. 83, 96-97, 831 P.2d 172 (1992).

³⁷ Appellant's Opening Brief, pp. 10.

³⁸ See Section III(L) of this Response Brief on pp. 27-28.

has unrestricted access to the court where she lives in Norway which is also the court with jurisdiction in this matter. Thus it is false for Lone to argue that she has no right to access the courts. She has access to the courts in Norway where she is a citizen and where she resides (and where she was residing with the child after Judge Cowser's order). Lone did in fact avail herself of the courts in Norway and the Norway court has ruled on this matter. Simon has submitted himself to the jurisdiction of the Norwegian court having jurisdiction even though he lives in Florida because Nora was living there with Lone. Norway has jurisdiction. Washington does not and thus this appeal should be dismissed.

B. The Order ruling that Washington Courts no longer have jurisdiction in this case was correct under the UCCJEA and should be affirmed.

As analyzed above, the specific terms of the UCCJEA make clear that Washington does not have continuing jurisdiction in this matter, thus Judge Cowser's ruling was correct on June 13, 2012 as was his Denial of Reconsideration dated August 3, 2012. Both rulings should be affirmed.

Washington courts have examined this jurisdictional issue and those rulings support Judge Cowser's decision. In *In re Marriage of Ieronimakis*,³⁹ the parties were domiciled in Greece.⁴⁰ One day while the husband was at work, the mother took the child and moved to

³⁹ *In re Marriage of Ieronimakis*, 66 Wash.App. 83, 831 P.2d 172 (Div. I, 1992)

⁴⁰ *Id* at 85-86.

Washington.⁴¹ One week later, she filed for divorce and custody.⁴² The husband started proceedings in Greece a few days later.⁴³ The Superior Court Commissioner spoke on the telephone to the Greek court and received assurances that it provided equal rights for women and the best interest of the child.⁴⁴ Thereafter, the Commissioner “entered an order in the Washington proceedings deferring jurisdiction to the Greek courts, stating that this ruling was in keeping with the policies of the Uniform Child Custody Jurisdiction Act (UCCJA) and *forum non conveniens*.”⁴⁵ The lower court later reversed itself and held jurisdiction was appropriate in Washington based on the “best interests of the child.”⁴⁶ After additional action by the court, the father appealed based on subject matter jurisdiction and the UCCJA.⁴⁷ The Court of Appeals agreed that Washington lacked jurisdiction to decide the matter.⁴⁸ The Court further

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 87-88. It should be noted that the considerations of the “best interests of the child” were removed from the UCCJEA in the 2001 revision. See *Tostado v. Tostado*, 137 Wash.App. 136, 146, 151 P.3d 1060 (2007): “This recodification of the UCCJEA in 2001 removed the ‘best interests of the child’ language because it ‘tended to create confusion between the jurisdictional issue and the substantive custody determination. Unif. Child Custody Jurisdiction and Enforcement Act, § 201 cmt., 9 U.L.A. 672 (1999).”

⁴⁵ *Id.*

⁴⁶ *Id.* at 88. Also, the best interest of the child standard was deleted in the 2001 legislative amendment of the UCCJA which was also renamed to the UCCJEA.

⁴⁷ *Id.* at 90.

⁴⁸ *Id.*

held that the burden to establish jurisdiction was on the petitioner.⁴⁹ In that case, even though the mother was residing in Washington, the Court ruled:

“applying the ‘general policies’ of the UCCJA to the dispute requires the Washington courts to decline jurisdiction.”⁵⁰

This ruling is also consistent with the ruling in *In re Marriage of Hamilton*, 120 Wash.App. 147, 84 P.3d 259 (2004) (Jurisdiction under UCCJEA is only appropriate in Washington if child has no “home state” or the home state has declined to exercise jurisdiction.)

Furthermore, even if both parties consented to have Washington courts retain jurisdiction – which Simon does not – the Washington courts would not actually have jurisdiction because “[j]urisdiction cannot be conferred by consent of the parties.”⁵¹ This has been a long-recognized legal principle which was recognized by the U.S. Supreme Court as far back as 1883:

As jurisdiction cannot be conferred by consent of parties, but must be given by the law, so it ought not to be extended by doubtful constructions.⁵²

⁴⁹ *Id.*

⁵⁰ *Id.* at 94.

⁵¹ *In re Custody of R.*, 88 Wash.App. 746, 753, 947 P.2d 745 (1997), citing *Wampler v. Wampler*, 25 Wash.2d at 267, 170 P.2d 316 (1946). *In re Custody of R.* was superseded on the “best interest of the child” issue being removed from the statute in 2001, but that is not the principle for which the case is cited here.

⁵² *Town of Elgin v. Marshall*, 106 U.S. 578, 580, 1 S. Ct. 484, 486, 27 L. Ed. 249 (1883).

The Washington Supreme Court has also ruled on the application of the UCCJEA in the “consent” context in the *In re Custody of A.C.*⁵³ In that case, the Washington Courts were asked to modify a Montana custody decree whereby one party lived in Washington with the child and the other (foster parents) lived in Montana. Although the petitioning foster parents brought the modification in Washington where the mother and child were residing, the Court held that was insufficient to establish jurisdiction, under the UCCJEA holding that:

Under the UCCJEA, a Washington court may modify Montana’s initial child custody determination only if either Montana declines jurisdiction or all parties have left that state. RCW 26.27.221.⁵⁴

The reverse of this situation is reflected in the facts of this case. Here, all parties **have** left the state and even if both parties consented to jurisdiction remaining here there is no jurisdiction conferred by law. The Washington Supreme Court further stated that:

In essence, the UCCJEA provides that unless all of the parties and the child no longer live in the state that made the initial determination sought to be modified, that state must first decide it does not have jurisdiction or decline jurisdiction.⁵⁵

Under this premise, *because* all parties have left the state, Washington

⁵³ *In re Custody of A.C.*, 165 Wash. 2d 568, 574, 200 P.3d 689, 691 (En Banc 2009).

⁵⁴ *Id.*

⁵⁵ *Id.* at 575.

does not need to decline jurisdiction for it to exist in another state (the applicable state here being Norway) and for Washington to have lost jurisdiction by application of law. However, this is further bolstered by the fact that the Washington court *did* make a ruling that it no longer has jurisdiction and thus the only state having jurisdiction is Norway. Judge Cowser's ruling was correct under the principles set forth *In re Custody of A.C.*

The striking difference between all of the cases cited above and this case, is that no party in this case resides in Washington. This fact further strengthens the analysis that Washington is wholly without jurisdiction. If the courts have held that Washington does not have jurisdiction under the UCCJEA when one party or one party and a child were residing in Washington, and/or when the parties all consent to have the case heard in Washington, there can be no question that in this case Washington has a complete lack of jurisdiction in this matter. Thus Judge Cowser was correct in the application of the jurisdictional standards under the UCCJEA, and his rulings on this matter should be affirmed.

C. The Order should be confirmed based on the "Inconvenient Forum" rules of the UCCJEA.

In addition to establishing both initial and continuing jurisdiction over child custody issues, the UCCJEA also provides direction on which

courts should most appropriately rule on these matters. RCW 26.27.261

addresses this issue:

26.27.261. Inconvenient forum

(1) A court of this state which has jurisdiction⁵⁶ under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(b) The length of time the child has resided outside this state;

(c) The distance between the court in this state and the court in the state that would assume jurisdiction;

(d) The relative financial circumstances of the parties;

(e) Any agreement of the parties as to which state should assume jurisdiction;

(f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) The familiarity of the court of each state

⁵⁶ Respondent, Simon Pedersen, disputes that the courts in Washington have the continuing jurisdiction to make a child custody determination. This section merely provides the Court an alternate basis for affirming Judge Cowser's decision.

with the facts and issues in the pending litigation.

(3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(4) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for dissolution or another proceeding while still retaining jurisdiction over the dissolution or other proceeding.

This Court can affirm Judge Cowser's rulings under this statute.

RCW 26.27.261 clearly provide a lower court in Washington with the authority to decline jurisdiction under defined circumstances. In determining whether it is appropriate for another state⁵⁷ to exercise jurisdiction, the court should consider the relevant factors set forth in the statute. An evaluation of these factors demonstrate that Judge Cowser was correct when he ruled that Washington would decline future jurisdiction.

Under RCW 26.27.261(2)(a) the existence of domestic violence between the parties may be considered. Here, Lone was living with her fiancé in Oslo, Norway since June 2011 while Simon, his new wife, and the minor child Nora lived in the United States. There was no physical proximity for domestic violence to have occurred or to continue. Holding

⁵⁷ Norway is considered a "state" under the UCCJEA.

that Washington was no longer a proper forum in this case is appropriate under RCW 26.27.261(2)(a).

Under RCW 26.27.261(2)(b), the court can consider the length of time the child has resided outside this state. While Nora was living in Washington at the time of the June 13, 2012 ruling, she was leaving on July 5, 2012 never to reside in Washington again. She would live either in Norway with Lone or, if the Norway court ruled (as it subsequently did) in Florida with Simon. When the Denial of Reconsideration was entered on August 3, 2012, Nora was gone from Washington, Simon was gone from Washington and Lone was long gone from Washington. Holding that Washington was no longer a proper forum in this case was appropriate under RCW 26.27.261(2)(b).

Under RCW 26.27.261(2)(c) the court can consider the distance between the court in this state and the court in the state that would assume jurisdiction. Here, the court in Norway is a very long way from the court in Snohomish County, Washington. It is also a long way from Simon's (then) intended and (now) current residence in Florida. Holding that Washington was no longer a proper forum in this case is appropriate under RCW 26.27.261(2)(c).

Under RCW 26.27.261(2)(d) the court can consider the relative financial circumstances of the parties. Here, Lone's financial disclosure

showed that her household income was nearly \$150,000 per year.⁵⁸ She had an attorney in Washington and an attorney in Norway. Simon, on the other hand, could not afford an attorney and has been acting *pro se* in this matter. The fact that Simon is willing to allow the courts in Norway to have jurisdiction which is very convenient for Lone (who has ample financial resources) and much less convenient for Simon (who resides in Florida) demonstrates that Judge Cowser's holding that Washington was no longer a proper forum in this case is appropriate under RCW 26.27.261(2)(d).

Under RCW 26.27.261(2)(e) the court can consider any agreement of the parties as to which state should assume jurisdiction. Here, the parties agreed to move the matter to Norway and did, in fact, litigate the matter there. Holding that Washington was no longer a proper forum in this case is appropriate under RCW 26.27.261(2)(e).

Under RCW 26.27.261(2)(f) the court can consider the nature and location of the evidence required to resolve the pending litigation, including testimony of the child. Here, the child was moving to Norway on July 5, 2012 to be reunited with Lone who moved there in 2011 while Simon was moving to Florida in July 2012. Any evidence in this case would be in either Norway or Florida. Thus holding that Washington was

⁵⁸ CP 93, line 4-5; 249, paragraph 12.

no longer a proper forum in this case is appropriate under RCW 26.27.261(2)(f).

Under RCW 26.27.261(2)(g) the court may consider the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence. There is no allegation from Lone (or Simon) that the courts in Norway were not as expeditious and fair as courts in the United States. Holding that Washington was no longer a proper forum in this case is appropriate under RCW 26.27.261(2)(g).

Under RCW 26.27.261(2)(h) the court can consider the familiarity of the court of each state with the facts and issues in the pending litigation. Lone and the minor child Nora were both located in Norway after July 5, 2012 and the court there was in the best position to determine the facts and issues with regard to the custody of Nora. Holding that Washington was no longer a proper forum in this case is appropriate under RCW 26.27.261(2)(h).

In reviewing all of the considerations under RCW 26.27.261 of the UCCJEA, Judge Cowsert's rulings that Washington would not exercise jurisdiction after July 5, 2012 were clearly correct and should be affirmed.

D. Issue of Child Support is not on appeal.

Although the two orders that Lone appeals had nothing to do with

child support but instead addressed the custody of Nora. Lone bases her plea for Washington jurisdiction based on non-appealed child support issues. Lone's Opening Brief is filled with information about child support even though no order being appealed addresses child support. Since the child support order was not appealed by Lone, the court should ignore all allegations made on that issue as irrelevant.

E. Cases cited by Lone are inapplicable to this case. The controlling authority is the UCCJEA as briefed above in Section III(A), (B), and (C).⁵⁹

In supporting her appeal, Lone cites several cases that barred a party from filing new actions in the court based on either a history of abuse of process or based upon failure to pay monies due. None of those cases are applicable here because Judge Cowsert's ruling was not a ruling limiting Lone access to a court with jurisdiction, rather it was a ruling that defined where appropriate jurisdiction would be for any future action between the parties in this matter. As stated above, the UCCJEA is the legal authority that controls where jurisdiction exists in this case.

*Bay v. Jensen*⁶⁰ cited by Lone is inapplicable. There, Washington was the correct jurisdiction but the Court disallowed the appellant to avail himself of the court until he had paid the respondent's attorneys fees.⁶¹

⁵⁹ Chapter 26.27 RCW.

⁶⁰ *Bay v. Jensen*, 147 Wash.App. 641, 196 P.3d 753 (2008).

⁶¹ *Id.* at 645.

This is not the case here. Likewise, *Yurtis v. Phillips*⁶² is a case whereby one party was enjoined from filing repetitive, abusive lawsuits. This is not the case here. Here, the court did not enjoin future litigation due to the behavior of either party, rather the court ruled that Washington no longer had jurisdiction in this matter since the mother Lone moved to Norway in 2011, the father Simon was moving to Florida in July 2012 and the minor child Nora was moving to Norway in July 2012. Since neither of the parties nor the minor child would be living in Washington after July 2012, the Washington courts would lose jurisdiction in this case as a matter of operation of law. This is a jurisdiction case and in child custody matters, the UCCJEA is controlling with regard to jurisdiction.

IV. ATTORNEY'S FEES

A. Lone is not entitled to attorney's fees or costs.

While offering no briefing whatsoever, Lone requests attorney's fees for the appeal based on: "Need vs. ability to pay, RCW 26.09.140, Simon's intransigence."⁶³ No evidence is in the record with regard to either of these bases. What evidence does exist in the record supports DENIAL of this request.

⁶² *Yurtis v. Phipps*, 143 Wash.App. 680, 181 P.3d 849 (2008).

⁶³ Appellant's Opening Brief, pp. 14.

1. *RCW 26.09.140 is no basis for attorney's fees in this case.*

RCW 26.09.140 is located within the Domestic Relations Act and provides as follows:

26.09.140. Payment of costs, attorneys' fees, etc.

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

The lower court order from which Lone takes this appeal did not award attorneys fees to her in this matter. Furthermore, the evidence before the court established that (1) Lone's household income is approximately \$150,000 per year;⁶⁴ (2) Lone had adequate resources to obtain legal counsel; (3) Simon did not have the resources to hire legal counsel and thus proceeded *pro se*.⁶⁵ Thus if the court is considering

⁶⁴ CP 93, line 4-5, CP 249, paragraph 12.

⁶⁵ CP 229, line 33-34.

“need versus ability to pay”, it should make an award to Simon.⁶⁶ Lone’s argument to the contrary is disingenuous at best. However, since Lone failed to adequately brief this issue, the Court should either refuse to review that issue or deny her request.⁶⁷

2. *There is no finding that Simon was intransigent and thus no basis exists for an award of attorney’s fees on that premise.*

Lone requests attorney’s fees based on “Simon’s intransigence” without citing any legal authority, any factual findings on this issue or provide any other basis for this claim. The record actually shows that Lone sought findings of contempt and the impositions of attorney’s fees twice and both times the court denied her request.⁶⁸ This further undermines her un-briefed claim for attorney’s fees on this basis. In accordance with *State v. Dennis* cited above, the Court should either refuse to review this issue or deny her request.⁶⁹

⁶⁶ Simon did incur approximately \$5,000 in attorney’s fees for assistance of an attorney on this brief. If the Court decided to award Simon fees, he will file a declaration to support the appropriate award by the court.

⁶⁷ See *State v. Dennis*, 115 Wash.2d 609, 629, 801 P.2d 193 (1990) (citing *Smith v. King*, 106 Wash.2d 443, 722 P.2d 796 (1986)).

⁶⁸ CP 190, line 20-23.

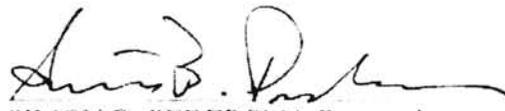
⁶⁹ See *State v. Dennis*, 115 Wash.2d 609, 629, 801 P.2d 193 (1990) (citing *Smith v. King*, 106 Wash.2d 443, 722 P.2d 796 (1986)).

V. CONCLUSION

Washington state no longer has jurisdiction over this matter under the UCCJEA. Norway has taken jurisdiction and is recognized by Washington as the appropriate forum for litigating this matter. Judge Cowser's ruling that Washington State is not the proper forum was correct under UCCJEA. But even if it was not correct is was only incorrect for having been made too early. As of January 5, 2013 the Washington courts have lost any jurisdiction over this case as a matter of law. Thus this appeal of the finding that Washington lacks jurisdiction over this case is now moot as the operation of UCCJEA. The absence of any party from the State Washington for more than a year means that Washington State no longer has jurisdiction is this matter. Lone's appeal should be dismissed and/or the lower court's ruling affirmed and the appeal denied.

Furthermore, Lone's request for attorney's fees was not briefed, is not based on supported facts or law, and is not appropriate based on the record. This request should likewise be denied.

RESPECTFULLY SUBMITTED this 18th day of July, 2013.


SIMON B. PEDERSEN, Respondent
Pro Se

Appendix

DECLARATION OF SERVICE

I, _____, declare:

1. I am a messenger for ABC Legal Services. I am over the age of 18 and competent to testify to the matters contained herein.

2. On the ____ day of July, 2013, I personally delivered a copy of this document to the Attorney for the Appellant, Helmut Kah, at the following address: 6818 140th Avenue NE, Woodinville, WA 98072-9001 by (delivering it to his receptionist) (handing it personally to Mr. Kah)

3. On the same day as listed above, I also filed two copies of this Brief with the Clerk's Office for the Court of Appeals, Division I in Seattle Washington.

I declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct to the best of my knowledge.

Executed at _____, Washington on this _____ day of July, 2013.

Name: _____
Address: _____

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